

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 968 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MEHSANA DISTRICT PANCHAYAT

Versus

JIVANBHAI KACHARABHAI PATEL

Appearance:

MR BD DESAI, AGP for Petitioners

NOTICE SERVED for Respondent No. 1,11

MS AVANI S MEHTA for Respondent No. 3, 5 to 10

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 03/12/1999

ORAL JUDGEMENT

1. This is a revision under section 115 of CPC challenging the order of the lower appellate court granting an injunction in favour of the respondents original plaintiffs, and reversing the order of the trial court which had refused such injunction. The respondents plaintiffs had filed a suit in the trial court on the ground that they are owners of the land and

superstructure thereon, that this fact is within the knowledge of the State, that the ownership of the land is on the official records of the Registrar where the registered sale deed in their favour are on the record, etc., and that inspite of this situation the State and the Land Acquisition Officer concerned are bent upon dispossessing the plaintiff without due process of law i.e. without issuing notice to the plaintiffs under the relevant provisions of the Land Acquisition Act.

2. The trial court had refused to grant an injunction for various reasons. The original plaintiffs, therefore, preferred an appeal to the lower appellate court under Order 43, Rule 1, which was accepted and allowed by the lower appellate court.

3. Having examined the impugned judgement and the evidentiary material on which reliance is placed, it is obvious that certain factual findings recorded by the lower appellate court are amply justified. There cannot be any dispute that the plaintiffs are owners of the land and also owners and occupants of the superstructures built thereon. There also cannot be any dispute that the lands in question have been converted to N.A use as early as 1958-59, and that the plaintiffs have become owners by registered sale deed in their favour since 1974 and onwards. It cannot, therefore, be disputed that in respect of any land acquisition proceedings initiated thereafter the plaintiffs would be "persons interested in the land" within the meaning of the said Act. However, the lower appellate court has clearly misread an earlier order passed by this court in Special Civil Application No.5263 and 5644 of 1982 dated 29th December 1982 between the parties. The lower appellate court has misinterpreted the said order by drawing a conclusion therefrom that land acquisition proceedings cannot be initiated without the consent of the owner or occupant. Firstly this is not a correct interpretation of the order, and no order passed by the High Court can be construed so as to defeat the provisions of any statute. It is obvious that the consent of an owner or an occupant is not necessary merely for the purpose of initiating land acquisition proceedings.

4. What is material is that the possession of the plaintiffs cannot be disturbed except by due process of law and in the instant case since land acquisition proceedings had been initiated, the plaintiffs can be dispossessed only after following the due procedure prescribed by the Act and the Rules. It is, therefore, open to the present petitioners (original defendants) to

take possession of the lands in question after following the procedure prescribed by the Act and the Rules.

5. Subject to the aforesaid observations and directions the present revision stands dismissed. Rule is discharged with no order as to costs.
